



## Report to the Auburn City Council

Action Item

Agenda Item No.

10

City Manager Approval

To: Mayor and City Council Members  
From: Bernie Schroeder, Director of Public Works  
By: Carie Huff, Associate Civil Engineer  
Date: July 25, 2011  
Subject: Phase II Stormwater Permit

### The Issue

Informational item only.

### Conclusion and Recommendation

No action to be taken.

### Background

The purpose of this staff report is to inform the Council on the reissuance of the Phase II Stormwater Permit and the potential financial implications to the City of Auburn.

The 1987 amendments to the Clean Water Act require the U.S. Environmental Protection Agency (EPA) to develop a comprehensive phased program to regulate storm water quality discharges under the National Pollutant Discharge Elimination System (NPDES) program. The City of Auburn is required to comply with these requirements. The existing General Permit (Water Quality Order 2003-0005-DWQ) was adopted by the State Water Board in April 2003 for a 5-year permit term. The existing General Permit expired in May 2008; however, it continues in force and in effect until a new General Permit is issued or the State Water Board rescinds it.

The State Water Resources Control Board issued a Notice of Opportunity for Public Comment (Notice) pertaining to the Draft National Pollutant Discharge and Elimination (NPDES) General Permit and Water Discharge Requirements for Storm Water Dischargers from Small Municipal Separate Storm Sewer Systems, hereafter referred to as the draft permit. The draft permit was released on June 7<sup>th</sup> and the state has allowed for a sixty two day review period which concludes August 8<sup>th</sup> (City of Auburn review extension request letter is attached). This draft permit is the reissuance of the original Phase II stormwater permit (Order No. 2003-0005-DWQ) and based on the current dates indicated in the permit, the City of Auburn would be required to be in compliance on May 15, 2012.

The draft permit expands upon the six existing stormwater program elements, and adds six major new programs:

1. Public Outreach – included in the original permit as inform the public, businesses and industry about stormwater and the impacts of stormwater pollution on local waterways. Requirements expanded to include the following:
  - Education strategy with Community Based Social Marketing (General Public, Commercial/Industrial and Construction (one acre or less)).
  - Two community surveys each year.
  - Prioritized watershed based research.

2. Public Involvement – included in the original permit as providing the community with opportunities to get involved in the stormwater program. Requirements expanded to include the following:
  - Citizen’s advisory group.
3. Illicit Discharge Detection and Elimination – included in the original permit as identify and eliminate illicit stormwater discharges and connections. Requirements expanded to include the following:
  - Spill response plan.
  - Field screening and Analytical Monitoring (in “priority areas” – number of areas undetermined).
4. Post Construction – included in the original permit as lessen the long-term impacts of stormwater discharges from urban development and redevelopment. Requirements expanded to include the following:
  - Extensive studies required.
  - Extensive reporting obligations.
  - Standards, Codes, Ordinances, Regulations, etc. required to be updated.
  - Effect on capital improvement projects and redevelopment – Low Impact Development and Hydromodification will be required.
  - Hydromodification is volume based and LID now mandated – add costs to CIPs, development and redevelopment projects.
5. Construction – included in the original permit as reduce pollutants in stormwater runoff and eliminate non-stormwater discharges from construction activities. Requirements expanded to include the following:
  - Construction site inventory – database software update required.
  - Construction plan review and approval procedures – now requires staff to quantify soil loss for justification of Best Management Practices (BMPs).
  - Construction site inspection and enforcement – defines when actual stormwater inspections must be performed without consideration of workload or staffing.
  - Permittee staff training – mandates staff training, testing and certifications equating to \$750 per person. Requires City to report on behavioral changes in attendees.
  - Construction site operator education – City responsible for distribution of educational materials to contractors/developers.
6. Municipal Operations – included in the original permit as implement good housekeeping measure to reduce pollutants from municipal activities. Requirements expanded to include the following:
  - Inventory and assess all City owned facilities and identify “hot spots.”
  - Develop Storm Water Pollution Prevention Plans (SWPPPs) for all “hot spots.”
  - Weekly, quarterly, and annual inspections.
  - Extensive storm drain system maintenance provisions.
  - Prepare maintenance schedule (assess and prioritize all catch basins 20% must be “high priority”), inspect all “high priority catch basins once per year, clean all catch basins within one week if it is more than 1/3 full, visually monitor surface drainage structures one time per year, assess all City O&M activities).
  - Incorporate water quality and habituate enhancement features in existing flood management facilities (assess at least two structures per year, implement changes or additions to two flood management projects per year to enhance water quality and habitat functions unless analysis shows infeasibility of changes).
  - Pesticide, herbicide and fertilizer management.
  - Annual employee or O&M vendor training with assessment of knowledge.

7. Program Management – new requirement included in the draft permit:
  - Revised ordinance to comply with draft permit, including requiring commercial and industrial facilities to install BMPs.
  - Must ensure adequate resources (staff and money).
  - Fiscal and staffing level reporting – three years at a time (annual fiscal analysis (capital and O&M), source of funding, certification that the City will comply, enforcement response plan, refer non-filers to Regional Board, tracking system, recidivism reduction (incentives and disincentives).
8. Trash Reduction Program – new requirement included in the draft permit:
  - Adopt trash reduction ordinance.
  - Retrofit sites with trash capture structural controls (20% of commercial/retail/wholesale zoned areas)
9. Industrial/Commercial Facility Runoff Control Program – new requirement included in the draft permit:
  - Inventory and prioritize thirty seven categories of commercial and industrial facilities.
  - Update annually.
  - Database of information on sites.
  - Retroactively require sites to implement BMPs.
  - Facility inspections.
  - Inspector training.
10. Receiving Water Monitoring – new requirement included in the draft permit:
  - Rotate monitoring annually among the watersheds.
  - Chemical and Physical Constituents (DO, temperature, conductivity, pH) require continuous monitoring over specified time frames.
  - Other parameters listed: pathogens, nutrients, bioassessments required, criteria of alteration status not clearly defined.
11. Program Effectiveness Assessment and Improvement – new requirement included in the draft permit:
  - Develop plan. Plan must respond to specific management questions.
  - Quantitative and science based estimates of pollutant load removals of BMPs.
  - Quantitative measurement of behavior changes.
  - Visual comparisons.
  - Water quality monitoring data.
  - Best management practice condition assessments.
  - Inventory, map and assess maintenance condition of urban BMPs (Lake Tahoe BMP Rapid Assessment Methodology).
  - Field observations required.
  - Long term maintenance plans.
  - Municipal Watershed Pollutant Load Quantification (annually).
  - Eleven specified constituents listed. Program modifications.
12. Total Maximum Daily Load (TMDL) Compliance Requirements – new requirement included in the draft permit:
  - TMDL implementation (BMPs, effectiveness assessment, monitoring).

- Must submit a Management Plan if not meeting a wasteload allocation.

In addition, there are new discharge prohibitions to control incidental runoff from potable and recycled water areas such as unintended overspray and excessive application (detect leaks within 72 hours or prior to release of 1,000 gallons, no watering during precipitation events, management of ponds so no discharge unless 25-year, 24-hour storm event or greater). Non incidental runoff is prohibited.

Based on the current dates in the draft permit, the City of Auburn would be required to be in compliance on May 15, 2012.

The changes within the permit will have a significant impact upon the City's resources and operations in order to comply. Staff is still working to fully understand the impacts to resources.

Staff has prepared a letter and submitted to the Chair of the SWRCB requesting a sixty day review extension (see attached). It is unclear at this time if the extension will be granted. In the meantime, staff is working on several fronts to prepare comments on the draft permit by the August 8<sup>th</sup> deadline. This includes participating in a regional collaboration with other area communities that will be impacted by these regulations including Placer County, City of Roseville, City of Lincoln, City of Rocklin and the Town of Loomis. In addition, the City is also part of a statewide collaboration. City staff was present at the July 19<sup>th</sup> State Water Resources Control Board to show support for the review extension. The primary concerns area:

- The new permit requirements are unfunded mandates by the State as they expand beyond Federal EPA stormwater regulations.
- Proposition 218 limits the City's ability to raise dedicated revenues to fund the program; as such the City will have to find new revenue to comply.
- Should the City be unable to fully comply with the permit, the City is potentially open to State fines and third party lawsuits.
- The permit creates new compliance burdens on development and local business including requirements to retroactively install stormwater best management practices within commercial and industrial facilities.

Staff will continue to update Council on the draft permit reissuance and our efforts to impact the outcome of the final permit. It is our goal to send a strong and consolidated message to the State Board that significant modifications to the draft storm water permit are necessary.

**Alternatives Available to Council; Implications of Alternatives**

Not applicable.

**Fiscal Impact**

Since 2003 the City of Auburn has spent between \$8,157 to \$28,870 per year on stormwater (permitting, staff time, map updates, and professional services for ordinance updates) essentially meeting the minimum permit requirements. This number does not include the cost of infrastructure maintenance (materials or staff time) or any construction projects. For instance, in fiscal year 2010-2011, the public works crew swept 5,500 miles of City streets, cleaned 4 miles of ditches, cleaned 18,000 drain boxes before and after rain events and 100 drain boxes were cleared. Although it is difficult at this time to fully recognize the fiscal implications of this permit, the cost increase will be exponential for the City of Auburn.

Following is the link to the draft Phase II Small Municipal Separate Storm Sewer System (MS4) Program:

[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/phase\\_ii\\_municipal.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/phase_ii_municipal.shtml)

Attachments: City of Auburn Letter to the State Water Resources Control Board  
Legislative Delegation Letter to the State Water Resources Control Board

City of **Auburn**

1225 Lincoln Way, Auburn, CA 95603 • (530)823-4211 • FAX (530)885-5508  
www.auburn.ca.gov

July 13, 2011

Charles R. Hoppin, Chair  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Subject: Request for Time Extension of Public Review Period  
Draft Phase II MS4 Permit

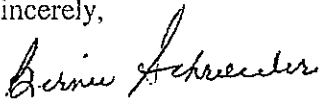
Dear Mr. Hoppin,

The State Water Resources Control Board issued a Notice of Opportunity for Public Comment (Notice) pertaining to the Draft NPDES General Permit and Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (Order), hereafter referred to as the draft permit. The Notice was issued on June 7, 2011 and allows for a sixty two day review period ending on August 8, 2011. This permit is the reissuance of the original Phase II MS4 permit (Order No. 2003-005-DWQ).

The draft permit includes significant changes that will have a direct impact on the City's resources and operations. Due to the scope and complexity of the draft permit, the City of Auburn respectfully requests an additional sixty days of review time (comment period ending Friday, October 7, 2011) be added to the regulatory process. This will make the total review period one hundred and twenty two days. This extra time will allow city staff an opportunity to fully assess the operational and cost impact of the draft permit. This is especially important given the challenging budgetary times for local communities.

Please respond on whether the California State Water Resources Control Board has granted an extension for review time. If you have any questions, please contact Carie Huff at (530) 823-4211. Thank you for your attention to this request.

Sincerely,



Bernie Schroeder  
Director of Public Works

CC: Thomas Howard, SWRCB Executive Director  
Robert Richardson, City of Auburn City Manager

# CALIFORNIA LEGISLATURE

STATE CAPITOL  
SACRAMENTO, CALIFORNIA  
95814

July 14, 2011

Charles R. Hoppin, Chair  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

**Subject: Request for Time Extension of Public Comment Period for the Draft Phase II MS4 Permit**

Dear Mr. Hoppin,

We understand that the State Water Resources Control Board issued a Notice of Opportunity for Public Comment (Notice) pertaining to the new Draft NPDES General Permit and Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer System, hereafter referred to as the draft permit. The Notice was issued on June 7, 2011 and allows for a 62-day review period ending August 8, 2011.

Over 40 cities, counties, and other affected public agencies have requested the review period be extended an additional 60 days. The new comment deadline would be October 7, 2011. The time extension would allow the regulated agencies the opportunity to fully study the operational and economic impact of the draft permit. Additionally, upon issuing a second draft of the permit, those same regulated agencies have requested an additional 30-day review period of the final draft for adoption once public comments have been incorporated.

Given the scope of the new draft permit that the State Water Resources Control Board issued, we feel that this request for an extension is reasonable and should be granted to provide a public review process that is meaningful and productive. Once the review period extension is granted, please provide public notification to this effect.

If you have any questions, please contact our offices. Thank you for your attention to our request.

Sincerely,



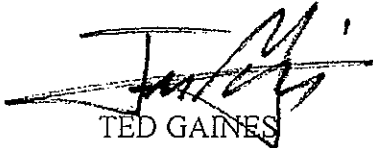
LOIS WOLK  
State Senator, 5th District



NOREEN EVANS  
State Senator, 2nd District



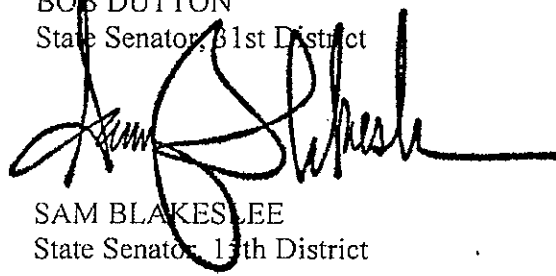
SHARON RUNNER  
State Senator, 17th District



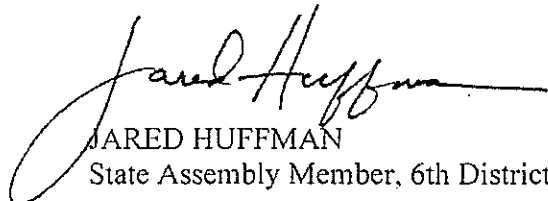
TED GAINES  
State Senator, 1st District



BOB DUTTON  
State Senator, 31st District



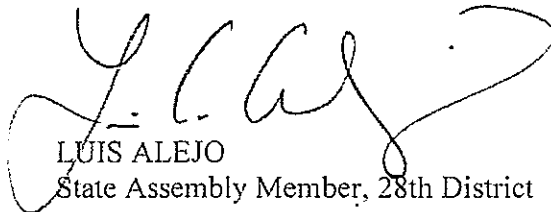
SAM BLAKESLEE  
State Senator, 13th District



JARED HUFFMAN  
State Assembly Member, 6th District



MARIKO YAMADA  
State Assembly Member, 8th District



LUIS ALEJO  
State Assembly Member, 28th District




GLORIA NEGRETE MCLEOD  
State Senator, 32nd District



TOM BERRYHILL  
State Assembly Member, 14th District



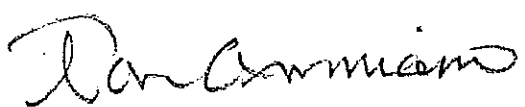
DOUG LA MALFA  
State Assembly Member, 4th District



ANTHONY CANNELLA  
State Senator, 12th District



BETH GAINES  
State Assembly Member, 4th District



TOM AMMIANO  
State Assembly Member, 13th District

Cc: Linda Adams, Secretary, California Environmental Protection Agency  
John Laird, Secretary, California Natural Resources Agency  
Matt Rodriguez, Incoming Secretary, California Environmental Protection Agency  
Nancy McFadden, Executive Secretary for Legislation, Office of the Governor

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